

**COURT OF APPEALS  
DECISION  
DATED AND FILED**

**May 15, 2018**

Sheila T. Reiff  
Clerk of Court of Appeals

**NOTICE**

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A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2016AP2240-CR**

**Cir. Ct. No. 2015CF1462**

**STATE OF WISCONSIN**

**IN COURT OF APPEALS  
DISTRICT I**

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**STATE OF WISCONSIN,**

**PLAINTIFF-RESPONDENT,**

**V.**

**JOHN W. NEWSOM,**

**DEFENDANT-APPELLANT.**

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APPEAL from a judgment and an order of the circuit court for Milwaukee County: CAROLINA STARK, Judge. *Affirmed.*

Before Brennan, P.J., Kessler and Dugan, JJ.

Per curiam opinions may not be cited in any court of this state as precedent or authority, except for the limited purposes specified in WIS. STAT. RULE 809.23(3).

¶1 PER CURIAM. John W. Newsom appeals the circuit court's judgment convicting him of possession of cocaine with intent to deliver, as a

second or subsequent offense. He also appeals the circuit court's order denying his motion for postconviction relief. Newsom argues: (1) the search warrant allowing a police dog to sniff the outside of his residence for the presence of drugs was not supported by probable cause; (2) a second warrant to search the interior of his residence was not supported by probable cause; and (3) the extended supervision condition that he not carry more than \$200 in cash is unreasonable. We affirm.

¶2 The police obtained a search warrant to bring a drug dog to the outside of Newsom's residence to smell for the presence of drugs. The dog alerted, indicating that drugs were inside the home. The police then obtained a second search warrant for the interior of Newsom's home based on the facts alleged in the first warrant, with the additional information that the dog had alerted to the presence of drugs. During the execution of the second warrant, the police seized drugs. Newsom moved to suppress. The circuit court denied the motion. Newsom then pled guilty to the charge.

¶3 Newsom first argues that the affidavit supporting the initial search warrant for the canine sniff fails to establish probable cause. "A search warrant may issue only on probable cause." *State v. Romero*, 2009 WI 32, ¶16, 317 Wis. 2d 12, 765 N.W.2d 756. "[A] probable cause determination must be based upon what a reasonable magistrate can infer from the information presented by the police." *State v. Ward*, 2000 WI 3, ¶26, 231 Wis. 2d 723, 604 N.W.2d 517. To determine whether probable cause exists in an application for a search warrant, a court looks at the totality of the circumstances. *Illinois v. Gates*, 462 U.S. 213, 238 (1983). "Where there is evidence that would lead a reasonable person to conclude that the evidence sought is likely to be in a particular location, there is probable cause for a search of that location." *Ward*, 231 Wis. 2d 723, ¶34

(internal quotation marks and citation omitted). We give “great deference to the warrant-issuing judge’s determination of probable cause, and that determination will stand unless the defendant establishes that the facts are clearly insufficient to support a finding of probable cause.” *Romero*, 317 Wis. 2d 12, ¶18.

¶4 The facts supporting a finding of probable cause for the canine sniff warrant issued March 27, 2015, are as follows. Detective Michael Lopez averred that he received information from a concerned citizen, who wished to remain anonymous, that an individual named “John” was selling marijuana on the 2400 block of North 34th Street in Milwaukee. Lopez said that he extensively debriefed the citizen, who told him that “John” sold marijuana from his car, a green GMC Yukon. The citizen said that he or she had observed John coming and going from 2468 North 34th Street.

¶5 Lopez stated that he conducted surveillance and saw a green GMC Yukon with a Wisconsin registration plate No. 443TZE in front of 2468 North 34th Street. Lopez reviewed police department records and learned that the car had been stopped two months earlier and the operator, Newsom, had been ticketed for operating after suspension. Lopez showed the citizen tipster a booking photograph of Newsom, and the person identified Newsom as the individual selling drugs.

¶6 Lopez averred that he spoke to Police Officer Eric Rom, who was also investigating a drug dealing complaint pertaining to 2468 North 34th Street. Officer Rom stated that on at least four separate occasions he observed Newsom coming and going from 2468 North 34th Street driving the green GMC Yukon in the mid-afternoon.

¶7 Lopez learned from police and court records that Newsom's home address was 4267 North 84th Street. Lopez averred that he observed the green GMC Yukon parked at Newsom's residence at 4267 North 84th Street during the morning hours on at least six occasions. Lopez stated that based on his personal experience, it is common for drug dealers to sell controlled substances from another person's residence, while keeping larger quantities of controlled substances at the drug dealer's residence, to reduce the likelihood of successful apprehension and prosecution.

¶8 Lopez averred that police department records connected Newsom and the 2400 block of 34th Street with drug sales in prior years. Lopez stated that the police seized marijuana when they executed a search warrant at 2468 North 34th Street on May 6, 2013. Michael York was arrested at that time and York stated that his girlfriend would sometimes hold contraband for a person named "John," who matched Newsom's physical description. Lopez also averred that Newsom was the target of a search warrant on September 9, 2010, on the 2400 block of North 34th Street, resulting in seizure of marijuana and a rifle. Carl Smith, who was arrested when the warrant was executed, told the police that Newsom sold drugs at that time.

¶9 Considering all of the information in the affidavit and our standard of review, which requires that we give great deference to the warrant-issuing judge's determination, we conclude that the affidavit supports a finding of probable cause for the warrant to conduct a dog sniff search of the outside of Newsom's residence. *See Ward*, 231 Wis. 2d 723, ¶34 ("Where there is evidence that would lead a reasonable person to conclude that the evidence sought is likely to be in a particular location, there is probable cause for a search of that location.") (citation and internal quotation marks omitted).

¶10 Newsom challenges the sufficiency of the warrant affidavit on several grounds. First, he argues that the affidavit did not establish that the citizen tip was reliable because it did not specify the citizen's name or age, and did not state whether the citizen provided reliable information in the past.

¶11 The affidavit did not list the person's name or age because the person wished to remain anonymous. The affidavit did not state whether the person had provided reliable information in the past, but there was no requirement that it do so. "[A] citizen informant is someone who happens upon a crime or suspicious activity and reports it to police." *State v. Kolk*, 2006 WI App 261, ¶12, 298 Wis. 2d 99, 726 N.W.2d 337. The affidavit stated that the information came from a concerned citizen who did not stand to reap any benefit by reporting the information. Where, as here, a citizen provides the police with information about criminal activity, the reliability of the person providing the information does not turn on whether they provided reliable information in the past; instead, the reliability of the person's tip is measured by other factors such as whether the police are able to corroborate the information the person provides. *See id.*, ¶14.

¶12 Second, Newsom argues that police did not adequately corroborate the concerned citizen's tip. This argument is unavailing. As detailed above, the affidavit explained the investigation and surveillance Lopez undertook, and explained how the information that Lopez discovered corroborated the citizen's statement that a person named John was selling drugs from a green GMC Yukon on the 2400 block of 34th Street.

¶13 Third, Newsom argues that the affidavit should have indicated specific dates or times the citizen saw the drug dealing and should have specified *how* the citizen was aware of the information. Newsom's argument on this point

has some merit. The better practice would have been for the warrant to include the specific dates and times the citizen observed the drug transactions and explain how the citizen was in a position to make these observations. As noted by the circuit court, failure to include this information is a weakness in the affidavit. Nevertheless, a search warrant affidavit may state probable cause even though it lacks specificity with regard to some of the facts alleged. Here, the affidavit established the reliability of the information provided by the concerned citizen because it explained how the police corroborated the tip and noted that the citizen was able to identify Newsom as the person selling drugs from a police photograph.

¶14 Fourth, Newsom argues that the information in the affidavit about Newsom’s involvement in drug dealing in 2010 and 2013 was “stale,” and thus no inference could be drawn from it about drug dealing in 2015 when the search warrant was issued. We disagree. As the Wisconsin Supreme Court has previously explained, “A distinction must be maintained between stale information and stale probable cause.” *State v. Multaler*, 2002 WI 35, ¶36, 252 Wis. 2d 54, 643 N.W.2d 437. “‘Stale probable cause ... is probable cause that would have justified a warrant at some earlier moment that has already passed by the time the warrant is sought.’” *Id.* (citation omitted). In contrast, information that is “stale” or dated in a warrant affidavit is not prohibited as long as it “contributes to an inference that probable cause exists at the time of application for the warrant.” *Id.* The information from 2010 and 2013 suggesting that Newsom may have been previously involved in drug dealing on the 2400 block of 34th Street was appropriately included in the affidavit as part of the larger picture presented to the warrant-issuing magistrate because “[d]rug trafficking is a crime that tends to occur over long periods of time.” *See State v. Jones*, 2002 WI App 196, ¶23, 257 Wis. 2d 319, 651 N.W.2d 305.

¶15 Fifth, Newsom argues that the affidavit does not provide probable cause to believe that evidence of drug dealing would be found *in Newsom's home*, as opposed to his car where the drug deal was alleged to have occurred. Here, too, Newsom's argument carries some weight. However, we conclude that it is reasonable to infer that a person regularly selling drugs may keep his supply of contraband in his home. *See Ward*, 231 Wis. 2d 723, ¶26.

¶16 In sum, then, Newsom's arguments challenging particular aspects of the warrant affidavit do not provide him with grounds for relief. Based on the totality of the circumstances alleged in the affidavit for the search warrant, including the relative weakness of some of the information, a reasonable person could logically infer that evidence of drug-dealing would be found at Newsom's home. *See id.* ("a probable cause determination must be based upon what a reasonable magistrate can infer from the information presented by the police"). Therefore, there was probable cause to issue the warrant for the canine search of the outside of Newsom's residence.

¶17 Newsom next argues that the second warrant lacked probable cause because it was based on the first warrant, with the addition of the information about the dog alerting to the presence of drugs. We have concluded that the first warrant was valid. Because we have concluded that the first warrant was valid, we also conclude that the second warrant issued shortly thereafter was valid, and the evidence obtained from it admissible.<sup>1</sup>

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<sup>1</sup> Newsom also argues that we should not apply the good faith exception to the exclusionary rule in the event that we conclude that the warrants were invalid. We need not address this issue. *See Maryland Arms Ltd. P'ship v. Connell*, 2010 WI 64, ¶48, 326 Wis. 2d 300, 786 N.W.2d 15 (cases should be decided on the narrowest possible grounds).

¶18 Newsom next argues that the circuit court misused its discretion when it imposed the condition that he not carry more than \$200 in cash during his extended supervision. The circuit court “may impose conditions upon the term of extended supervision.” WIS. STAT. § 973.01(5) (2015-16).<sup>2</sup> The conditions must be “reasonable and appropriate.” *State v. Galvan*, 2007 WI App 173, ¶8, 304 Wis. 2d 466, 736 N.W.2d 890. Conditions of extended supervision are reasonable and appropriate if they help serve the goals of extended supervision. See *State v. Koenig*, 2003 WI App 12, ¶7, 259 Wis. 2d 833, 656 N.W.2d 499. The decision to impose conditions of extended supervision is committed to the circuit court’s discretion. *Galvan*, 304 Wis. 2d 466, ¶8.

¶19 In its decision denying the postconviction motion, the circuit court explained that it imposed the \$200 cash restriction to protect the community and foster Newsom’s rehabilitation, even though the court was aware that this restriction would place a burden on Newsom.

First, this condition of extended supervision serves the goals of community protection [and] rehabilitation of the defendant by prohibiting him from possessing an item commonly used in illegal drug distribution.... [T]hose engaged in illegal drug distribution often possess larger amounts of money in cash in order to facilitate that illegal conduct.

Second, this is the Defendant’s third conviction for a crime related to cocaine distribution. The Defendant was convicted of possessing cocaine with the intent to deliver it in a case from 1999, and he was convicted of delivering cocaine in a case from 2007. Given the Defendant’s repeated convictions related to cocaine distribution over a period of sixteen years from 1999 to 2015, this condition of supervision not only serves the above-mentioned goals, it

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<sup>2</sup> All references to the Wisconsin Statutes are to the 2015-16 version unless otherwise noted.



serves them well by taking away one of the tools commonly used to illegally distribute drugs.

The Court acknowledges that cash in an amount of more than \$200 has many non-criminal legitimate purposes ... and the Court knew this at sentencing. The Court acknowledges that this condition places a burden on the Defendant to make arrangements that do not involve possessing more than \$200 in cash to pay for things like rent and other expenses, and the Court knew this at sentencing. Given the availability of expense payment options that do not involve possessing cash, such as a checking or savings account with a debit card, and given the Defendant's repeated illegal conduct related to cocaine distribution over a sixteen-year period, this burden is reasonable.

The circuit court's thorough reasoning reflects a proper exercise of discretion because it applied a proper standard of law to the facts and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach. *See Gaugert v. Duve*, 2001 WI 83, ¶44, 244 Wis. 2d 691, 628 N.W.2d 861.

*By the Court.*—Judgment and order affirmed.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

